

AN ACT

ENTITLED, An Act to authorize the Public Utilities Commission to regulate certain telecommunications services and to authorize the Bureau of Information and Telecommunications to assist local governmental associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The telecommunications company of any subscriber may not be changed without the telecommunications service subscriber's authorization. The telecommunications service subscriber's authorization shall be evidenced either by a written authorization signed by the subscriber or by the use of an independent third-party verification company which complies with the provisions of sections 2 and 3 of this Act, or by any other means authorized by the commission. Products or services may not be listed on a subscriber's bill unless authorized by the subscriber. The commission may promulgate rules pursuant to chapter 1-26 concerning procedures, requirements, and standards for changing a subscriber's telecommunications company and for listing products and services on a subscriber's bill.

Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications service, the third-party verification shall include:

- (1) A statement that the purpose of the call is to verify the subscriber's intent to change to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company shall be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, shall be

secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

- (2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telecommunications account on behalf of the subscriber, whether that subscriber is an individual person or a business;
- (3) Verification data unique to the subscriber such as the subscriber's date of birth; and
- (4) The name and toll-free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record the telephone call that confirms the subscriber's change of a designated telecommunications company. The electronic recording shall include the complete statement of the service being changed and the subscriber's complete response. The electronic recording shall be retained by the third-party verification company for two years.

Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The third-party verification company shall meet each of the following criteria:

- (1) Be independent of the telecommunications company that seeks to provide the subscriber's new service;
- (2) Not be managed, controlled, or directed or owned wholly or in part, by the telecommunications company that seeks to provide the subscriber's new service;
- (3) Operate from facilities physically separate from those of the telecommunications company that seeks to provide the subscriber's new service; and
- (4) Not derive commissions or compensation based upon the number of sales confirmed.

Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

A telecommunications company selling more than one type of telecommunications service must obtain separate authorization to change a telecommunications company from the subscriber for each service sold, although the authorizations may be made within the same solicitation. At a minimum, separate authorizations must be obtained for local exchange service, intraLATA toll service, and interLATA toll service. Each authorization must be verified separately from any other authorizations obtained in the same solicitation.

Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

A subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without authorization from the subscriber or for the billing of unauthorized products or services. In addition, the telecommunications company that initiates the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars.

Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any person who violates this Act or any rules promulgated pursuant to this Act is subject to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The commission may impose a civil fine of not more than twenty thousand dollars for each offense. In determining the amount of the penalty upon finding a violation, or the amount of the compromise settlement, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, prior offenses and compliance history, the good faith of the person charged in attempting to achieve compliance, and such other matters as justice may require. All penalties collected pursuant to this section shall be deposited in the state treasury. In addition to assessing a civil penalty for a violation of this Act, the commission may revoke or suspend a telecommunications company's certificate of authority for repeated offenses.

Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If the commission receives more than two complaints within thirty days regarding violations of section 1 of this Act, the commission may require the telecommunications company responsible for the violations to provide the commission with a complete list of its current subscribers, including the subscribers' billing addresses. The list may be filed as confidential consistent with the commission's rules. The commission may contact each subscriber to determine whether any subscriber has been subject to an unauthorized change in a telecommunications company or billed for unauthorized products or services. If the commission finds, after notice and opportunity for hearing, that a telecommunications company has committed two separate violations of section 1 of this Act within one year, the commission may assess the costs of contacting subscribers to the telecommunications company.

Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If the commission finds the company has committed a violation of this Act after holding a contested case proceeding or if allowed by section 7 of this Act, the commission may assess the actual costs of the contested case proceeding or contacting subscribers to the telecommunications company. The assessment shall be limited to actual amounts expended by the commission for commission employee time, expert witnesses, court reporter fees, document and exhibit preparation, and other necessary and related expenses incurred by the commission. The telecommunications company may, within thirty days after the assessment is mailed, file written objections with the commission stating the grounds upon which it claims that the assessment is not reasonable. The commission shall within thirty days of receiving such objections hold a hearing and issue an order in accordance with its findings as to the proper amount to be assessed to the telecommunications company. The order may be appealed pursuant to chapter 1-26.

Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of this Act, the term, subscriber, means any person who contracts with a telecommunications company for telecommunications services.

Section 10. That § 37-30A-9 be repealed.

Section 11. That § 1-33-43 be amended to read as follows:

1-33-43. The Bureau of Information and Telecommunications shall perform functions to include, but not be limited to:

- (1) Providing technical and management assistance to state agencies and institutions as to systems or methods to be used to meet information and communication requirements efficiently and effectively;
- (2) Developing and proposing operational technical standards for the state information systems which will ensure the interconnection of computer networks and information of state agencies;
- (3) Purchasing from, or contracting with, suppliers and communications common carriers for communications facilities or services;
- (4) Cooperating with any federal, state, or local emergency management agency in providing for emergency communication and information services;
- (5) Providing, where deemed feasible, a means whereby local governmental agencies, the association authorized by § 13-8-10.1, and the school administrators of South Dakota may utilize the state communication and information systems and service; and
- (6) In cooperation with the appropriate state agencies, plan, design, and conduct experiments in information services, equipment, and technology, and to implement enhancements in the state information system.

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I certify that the attached Act
originated in the

SENATE as Bill No. 238

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 238
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

19____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 19____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19____
at _____ o'clock __ M.

Secretary of State

By _____
Ass. Secretary of State